

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5238 of 1985

Date of decision: 30-07-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DAYABEN BABUBHAI PARDESHI

Versus

STATE OF GUJARAT  
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Appearance:

MR PH PATHAK for Petitioner

Mrs. Siddhi Talati for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/07/97

## ORAL JUDGEMENT

Mrs. Siddhi Talati, counsel for the respondents states that in this case reply to the special civil application is filed; but I do not find the reply on the record of the special civil application. However, the counsel for the petitioner admits that copy of the reply to the special civil application has been given to him by the respondents. In view of this position copy of the reply is taken from the counsel for the petitioner and the same is placed on the record. The petitioner, a sweeper, belonging to Scheduled Caste, has filed this petition praying for a direction to the respondents to treat her as a permanent employee from the initial date of appointment and to grant all fringe benefits available to permanent employees and for further direction to the respondents to pay her salary in the grade of Rs.196-232. By amending the petition, further prayer has been made for direction to the respondents to absorb the petitioner on the vacant post at Jayshanker Sundari Hall, Ahmedabad.

2. The facts of the case, in brief, are that the petitioner was initially appointed in the year 1974 as sweeper on a sanctioned post in the office of respondent No.3, after her name was sponsored by the employment exchange. Petitioner was paid Rs.50 per month as salary. The services of the petitioner came to an end on 20th July, 1977. However, again the petitioner has been appointed on the original post of Sweeper with pay of Rs.50 per month. The petitioner has come up with the case that there was work for 7 hours a day, from 8.00 a.m. to 12.00 noon, and from 5.00 p.m. to 8.00 p.m. The monthly salary fixed has been increased from time to time and lastly she has been drawing Rs.150 per month, when she filed this writ petition in this Court. Reference has been made to Government Resolution, Finance Department, dated 24th March, 1976 by which monthly consolidated remuneration payable to Class IV employees on the basis of hours of work has been prescribed. This resolution is given effect from 1st April, 1976. Further revision of the monthly consolidated salary payable to part-time class IV employees has been made by resolution dated 2nd September, 1983 which has been given effect from 1st August, 1983. Further reference has been made by the petitioner to the Government Resolution, Finance Department, dated 26th January, 1980 in regard to regular absorption of part-time employees who have put in three or more years of service. The petitioner has made request to the respondents to regularise her services and to pay her salary of a regular employee.

3. Reply to the special civil application has been filed by the respondents. After filing of this petition, the respondents under letter dated 6-2-1990 asked the petitioner whether she was willing to work as Sweeper at Jayshanker Sundari Hall, Ahmedabad. The petitioner has given her consent to work at Ahmedabad. However, she was not relieved from Gandhinagar to join duty at Jayshanker Sundari Hall, Ahmedabad. The petitioner has therefore made grievance before this Court. This Court passed order on 25th July, 1991 that the petitioner shall be relieved within a week from the date of receipt of the writ of the order of this Court so as to enable her to resume duties as sweeper in the pay-scale of Rs.750-940 at Jayshanker Sundari Hall, Ahmedabad. Now it is not in dispute that petitioner has been taken at Jayshanker Sundari Hall, Ahmedabad, in the pay-scale of Rs.750-940 and she is working there.

4. The only grievance which the counsel for the petitioner now makes is that the petitioner should have been given monthly consolidated remuneration at the rate of Rs.262.50 ps. per month from 1st April, 1976 to 31st July, 1983 and from 1st August, 1983 till the date she joined at Jayshanker Sundari Hall at Ahmedabad she should be paid consolidated salary at the rate of Rs.332.50 per month. As she has been paid at much lower rate during the said period, she claims that she is entitled to difference of wages together with interest. This claim of the petitioner has been contested by the respondents in the reply on the ground that the post of sweeper in the Sports Hostel was sanctioned on fixed pay. The resolution on which reliance has been placed for claiming consolidated monthly salary on the basis of hours of working is applicable for part-time employees. This contention raised by the respondents is wholly arbitrary and unjustified. A Welfare State has taken such a defence which even ordinary trader will not take. The post on which the petitioner was working would have been sanctioned with fixed pay. But the fact is that the petitioner was working for more than 7 hours a day. Then, how she could have been put in a position worst than a person holding part-time post? The only reply of the respondents is that the post on which the petitioner was working was sanctioned with fixed pay. So the petitioner will be at a disadvantageous position though she has been working on full time basis. The respondents have not disputed that the petitioner was working for more than 7 hours. Therefore the defence of the respondents is nothing but a defence for the sake of defence, meaning thereby, the respondents have no defence against the claim of the petitioner. This artificial

distinction sought to be made out has no nexus whatsoever with the object sought to be achieved. The distinction sought to be made by the respondents is illusory and absolutely without any basis and justification. Denial of consolidated monthly remuneration to the petitioner on the basis of hours of work as laid down from time to time for part-time Class IV employees is wholly unjustified.

5. In the result this special civil application succeeds. The respondents are directed to pay to the petitioner monthly consolidated remuneration at the rate of Rs.262.50 from 1-4-1976 to 31-7-1983 and at the rate of Rs.332.50 ps. per month from 1-8-1983 till the date she joined Jayshanker Sundari Hall at Ahmedabad. The amount of wages payable to the petitioner on the basis of the aforesaid monthly rates will be calculated within a period of two months from the date of receipt of certified copy of this order, and the wages paid to the petitioner during the said period shall be deducted from the amount so determined. The balance amount shall be paid to the petitioner within a period of two months thereafter. The respondents are further directed to pay interest on the arrears of wages to the petitioner at the rate of 12% per annum from the due date. The amount of interest should be calculated and paid along with the said amount within the aforesaid period. The respondents are further directed to pay Rs.1000/- (Rupees one thousand) by way of cost of this petition to the petitioner. Rule made absolute accordingly.

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